

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

SENTRY EQUIPMENT CORP.,

Plaintiff,

v.

GARY K. EVANS and ACECO  
MACHINE INC.,

Defendants.

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Case No. 6:18-CV-417-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**


This case was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. Docket No. 5. On May 29, 2019, the Magistrate Judge issued a Report and Recommendation (Docket No. 67), recommending that Plaintiff's Motion to Dismiss Counterclaim Count II (Docket No. 61) be granted-in-part and denied-in-part. Specifically, the Magistrate Judge recommended that Plaintiff's motion be granted with respect to Defendants' fraud and negligent misrepresentation counterclaims alleged in Count II because Defendants failed to plead with particularity as required by Federal Rule of Civil Procedure 9(b). Docket No. 61. The Magistrate Judge, however, recommended that Plaintiff's motion be denied with respect to Defendants' breach of contract counterclaims alleged in Count II because Defendants' allegations, taken as true at the pleading stage, set forth a plausible claim brought within the applicable limitations period. *Id.* The Magistrate Judge further recommended that Defendants be given leave to file amended counterclaims. *Id.*

No objections to the Report and Recommendation have been presented for consideration within the prescribed time period for such objections. The Court therefore adopts the Report and

Recommendation of the Magistrate Judge as the findings of this Court. Docket No. 67.

Accordingly, it is hereby **ORDERED** that the Magistrate Judge's Report be **ADOPTED** and that Plaintiff's motion (Docket No. 61) be **GRANTED-IN-PART** and **DENIED-IN-PART**. Specifically, the Court **ORDERS** that Plaintiff's motion be **GRANTED** with respect to Defendants' fraud and negligent misrepresentation counterclaims alleged in Count II and that it be **DENIED** with respect to Defendants' breach of contract counterclaims alleged in Count II. *Id.* The Court **FURTHER ORDERS** that Defendants may file amended counterclaims within **14 days** after the issuance of this Order.

So **ORDERED** and **SIGNED** this **14th** day of **June, 2019**.

  
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JEREMY D. KERNODLE  
UNITED STATES DISTRICT JUDGE